

adjusted from time to time in accordance with Appendix B to Part 225 of this chapter.

Supervisory employee means an officer, special agent, or other employee of the railroad who is not a co-worker and who is responsible for supervising or monitoring the conduct or performance of one or more employees.

Train, except as context requires, means a locomotive, or more than one locomotive coupled, with or without cars. (A locomotive is a self-propelled unit of equipment which can be used in train service.)

Train accident means a passenger, freight, or work train accident described in §225.19(c) of this chapter (a "rail equipment accident" involving damage in excess of the current reporting threshold), including an accident involving a switching movement.

Train incident means an event involving the movement of railroad on-track equipment that results in a casualty but in which railroad property damage does not exceed the reporting threshold.

Violation rate means the number of covered employees (as reported under §219.801) found during random tests given under this part to have an alcohol concentration of .04 or greater, plus the number of employees who refuse a random test required by this part, divided by the total reported number of employees in the industry given random alcohol tests under this part plus the total reported number of employees in the industry who refuse a random test required by this part.

[66 FR 41973, Aug. 9, 2001, as amended at 68 FR 10135, Mar. 3, 2003]

§219.7 Waivers.

(a) A person subject to a requirement of this part may petition the FRA for a waiver of compliance with such requirement.

(b) Each petition for waiver under this section must be filed in a manner and contain the information required by Part 211 of this chapter. A petition for waiver of the Part 40 prohibition against stand down of an employee before the Medical Review Officer has completed the verification must also comply with §40.21 of this title.

(c) If the FRA Administrator finds that waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any necessary conditions.

§219.9 Responsibility for compliance.

(a) Any person (an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: A railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least \$500 and not more than \$11,000 per violation, except that: Penalties may be assessed against individuals only for willful violations; where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury, or has caused death or injury, a penalty not to exceed \$22,000 per violation may be assessed; and the standard of liability for a railroad will vary depending upon the requirement involved. See, e.g., §219.105, which must be construed to qualify the responsibility of a railroad for the unauthorized conduct of an employee that violates §219.101 or §219.102 (while imposing a duty of due diligence to prevent such conduct). Each day a violation continues constitutes a separate offense. See Appendix A to this part for a statement of agency civil penalty policy.

(b)(1) In the case of joint operations, primary responsibility for compliance with this part with respect to determination of events qualifying for breath or body fluid testing under Subparts C and D of this part rests with the host railroad, and all affected employees must be responsive to direction from the host railroad consistent with this part. However, nothing in this paragraph (b)(1) restricts the ability of the railroads to provide for an appropriate assignment of responsibility for compliance with this part as among